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46 **UNITED STATES DISTRICT COURT**  
47 **CENTRAL DISTRICT OF CALIFORNIA**

48 KEITH ANDREWS, an individual,  
49 TIFFANI ANDREWS, an individual,  
50 BACIU FAMILY LLC, a California  
51 limited liability company, ROBERT  
52 BOYDSTON, an individual,  
53 CAPTAIN JACK'S SANTA  
54 BARBARA TOURS, LLC, a  
55 California limited liability company,  
56 MORGAN CASTAGNOLA, an  
57 individual, THE EAGLE FLEET,  
58 LLC, a California limited liability  
59 company, ZACHARY FRAZIER, an  
60 individual, MIKE GANDALL, an  
61 individual, ALEXANDRA B.  
62 GEREMIA, as Trustee for the  
63 Alexandra Geremia Family Trust  
64 dated 8/5/1998, JIM GUELKER, an  
65 individual, JACQUES HABRA, an

66 **Case No. 2:15-cv-04113-PSG-JEM**

67 [Consolidated with Case Nos. 2:15-CV-  
68 04573 PSG (JEMx), 2:15-CV-4759 PSG  
69 (JEMx), 2:15-CV-4989 PSG (JEMx), 2:15-  
70 CV-051118 PSG (JEMx), 2:15-CV-07051-  
71 PSG (JEMx)]

72 **REBUTTAL DECLARATION OF**  
73 **RANDALL BELL, PHD, MA IN**  
74 **SUPPORT OF RENEWED MOTION**  
75 **FOR CLASS CERTIFICATION AND IN**  
76 **OPPOSITION TO PLAINS' MOTION**  
77 **TO STRIKE**

1 individual, ISURF, LLC, a California  
2 limited liability company, MARK  
3 KIRKHART, an individual, MARY  
4 KIRKHART, an individual,  
5 RICHARD LIL YGREN, an  
6 individual, HWA HONG MUH, an  
7 individual, OCEAN ANGEL IV,  
8 LLC, a California limited liability  
9 company, PACIFIC RIM  
10 FISHERIES, INC., a California  
11 corporation, SARAH RATHBONE,  
12 an individual, COMMUNITY  
13 SEAFOOD LLC, a California  
14 limited liability company, SANTA  
15 BARBARA UNI, INC., a California  
16 corporation, SOUTHERN CAL  
17 SEAFOOD, INC., a California  
18 corporation, TRACTIDE MARINE  
19 CORP., a California corporation,  
20 WEI INTERNATIONAL TRADING  
21 INC., a California corporation and  
22 STEPHEN WILSON, an individual,  
23 individually and on behalf of others  
24 similarly situated,

Date: February 5, 2018  
Time: 1:30 p.m.  
Location: Courtroom 6A  
Judge: Hon. Philip S. Gutierrez

13 Plaintiffs,

14 v.

15 PLAINS ALL AMERICAN  
16 PIPELINE, L.P., a Delaware limited  
17 partnership, PLAINS PIPELINE,  
18 L.P., a Texas limited partnership, and  
19 JOHN DOES 1 through 10,

20 Defendants.

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1 I, Randall Bell, Ph.D., MAI declare:

2 1. I submitted three prior declarations in this matter: Declaration of  
3 Randall Bell, Ph.D., MAI in Support of Plaintiffs' Motion for Class Certification  
4 [Dkt. #125], Rebuttal Declaration of Randall Bell, Ph.D., MAI [Dkt. #214], and  
5 Declaration of Randall Bell, Ph.D., MAI in Support of Plaintiffs' Renewed Motion  
6 for Class Certification [Dkt. # 300-3]. I submit this further Declaration to respond  
7 to certain statements made by Defendants and their consultants.

8 2. In my original declarations, I described, from an appraisal perspective,  
9 how loss of use damages for impacted property owners and lessees can be  
10 calculated. Specifically, I described how, based on my experience and research  
11 for this case, any harm to property owners and lessees can be quantified and why  
12 such losses can be quantified through mass appraisal techniques.

13 3. I have read Plains' motion to strike and opposition to the renewed  
14 motion for class certification, as well as the declarations and depositions of Jerry  
15 Dent and Nancy Mathiowetz, and I disagree with their criticisms of my work.  
16 Relevant extracts of my deposition transcript cited in this declaration are attached  
17 as Exhibits to the concurrently filed Declaration of Juli Farris.

18 4. First of all, it is incorrect to say that my methodology in this case  
19 measures stigma damages or lost property value. I explained this repeatedly to  
20 Plains counsel at my deposition on August 16, 2017. See Deposition of Randall  
21 Bell, Aug. 16, 2017 ("Bell Dep.") at 19:13-17; 118:17-24; 275:7-276:3. To be  
22 clear, loss of use of a water or beach amenity falls within the "use" element of  
23 USPAP Advisory Opinion 9. And, as I explained in my prior declaration at ¶¶ 58-  
24 60, use effects reflect impacts on the utility of a site as a result of contamination,  
25 and rental rates provide an appropriate measure of loss of use. It is incorrect to  
26 characterize loss of use as "temporary decrease in property value." Loss of use is  
27 different from "risk" effects, or stigma, which concerns impacts on property value  
28 due to environmental risk. In sum, there is a distinct difference between "loss of

1 use" (which I am measuring) and "diminution in value" (which I am not  
 2 measuring).

3       5. Second, Plains and its consultants appear to be missing the point of my  
 4 field surveys. Although the surveys conducted here were relatively informal, I am  
 5 qualified to design and conduct formal scientific surveys. While earning my  
 6 Ph.D., I completed coursework and trained in statistics and survey methodology. I  
 7 am also well-versed in performing less formal field surveys, or market  
 8 verifications, in connection with real estate appraisal work. I have published  
 9 written work that includes discussions about conducting formal and informal  
 10 surveys in the context of real estate appraisals.

11       6. As a real estate economist and licensed appraiser, I routinely design  
 12 and conduct informal surveys to reconcile market data like I did in this case. All  
 13 surveys that I design and conduct, whether informal market verifications like those  
 14 used here, or formal scientific surveys, conform to professional standards  
 15 applicable to mass appraisals.

16       7. As I testified at my deposition in August, the field surveys in this case  
 17 were used to generally verify the findings of Igor Mezic, the industry literature  
 18 regarding the effects of environmental contamination on property owners and  
 19 lessees, and media reports of Plains' oil spill. Bell Dep. 37:5-23; 40:24-42:14;  
 20 45:6-25; 248:22-249:3. These types of surveys are commonly used by licensed  
 21 appraisers in any assignment from as simple as appraising a house to something  
 22 more complex like this case. *Id.* The field surveys provide *additional* evidence of  
 23 the impact of the Plains oil spill. The point is to get out in the field and verify  
 24 data, and the surveys were not designed to be scientific. Bell Dep. 251:18-252:22.

25       8. As I explained further at my deposition, the beach survey respondents  
 26 were selected because, in my professional experience, beachgoers have opinions  
 27 as to what level of oiling is acceptable to them. Beachgoers, in my opinion, are a  
 28 relevant source of data regarding beach oiling. Bell Dep. 42:15-43:11; 159:14-

1 160:5. Moreover, in my professional experience, it has always been my  
2 understanding that the tolerance for oiling on beaches does not vary materially  
3 from beach to beach or state to state.

4 9. As I further explained at my deposition, the 300-person plus  
5 neighborhood survey was intended to verify what I learned from Professor Mezic  
6 and media reports with people in the neighborhoods near the beaches. Bell Dep.  
7 230:1-15; 231:7-15.

8 10. I did not intend either survey to identify specific properties that were  
9 impacted, and I did not rely on them for that purpose. Bell Dep. 230:24-231:6.

10 11. I understand that Plains' consultant Nancy Mathiowetz criticized me  
11 for not "pretesting" the field surveys, but pretesting is not necessary for this type  
12 of survey, and as I testified, no refinements were done when the surveys were  
13 taken (Bell Dep. 161:13-23) which tells me that there were no problems with the  
14 questions or how they were being asked.

15 12. In designing the beach survey, I worked with my colleague Valeo  
16 Shultz, who is also an MAI appraiser, and we discussed the materials received  
17 from NOAA and the levels of oiling that Professor Mezic determined at various  
18 beaches. Mr. Shultz has done surveys in appraisal work for many years. Bell  
19 Dep. 11:21-12:1; 168:12-25.

20 13. As I explained to Plains' counsel, I asked a graphic artist to put  
21 together the drawings to reflect the levels of oiling described in the NOAA manual  
22 and to superimpose a footprint on each of the graphics. Bell. Dep. 183:10-184:14.  
23 I asked Mr. Shultz to randomly sample beachgoers in Southern California and  
24 show them the graphics in the order showing least oiling to most. Bell Dep.  
25 169:11-170:5. I am confident, based on my professional relationship with Mr.  
26 Schultz and his extensive experience designing and conducting surveys, that he  
27 did not vary from the questions written down in the surveys. *Id.*; 176:1-11.

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1       14. As I explained to Plains' counsel at my deposition, I understand that a  
2 band of oil on a beach fluctuates in and out as the tide rises and falls. The beach  
3 survey graphics were not meant to suggest, and I do not believe they do, that the  
4 "entire beach" was covered with the amount of oil depicted in the graphics used in  
5 the surveys. Bell Dep. 191:5-192:6.

6       15. Finally, Plains misconstrues the loss of use analysis on another point  
7 even though I explained this at my deposition. Loss of use here is not limited to  
8 loss of use of public beaches, but also includes loss of use of private property. For  
9 example, where Plains' oil washed up above the mean high tide line, then  
10 beachfront and beach easement properties have lost use of a private beach as well  
11 as a public beach. Bell Dep. 76:9-78:10; 282:7-22.

12

13       I declare under penalty of perjury under the laws of the State of California  
14 that the foregoing is true and correct.

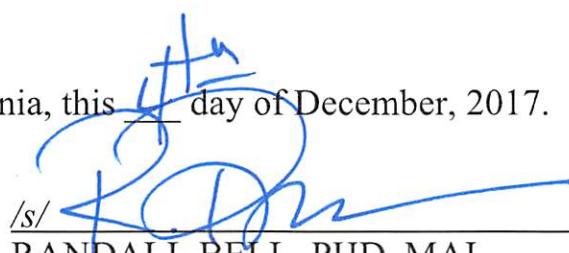
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Executed at Laguna Beach, California, this 11 day of December, 2017.

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/s/   
RANDALL BELL, PHD, MAI

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